

HAYNSWORTH SINKLER BOYD, P.A.

ATTORNEYS AT LAW

160 EAST BAY STREET
POST OFFICE BOX 340
CHARLESTON, SOUTH CAROLINA 29402-3040
TELEPHONE (843) 722-3366
FAX (843) 722-2266

134 MEETING STREET
FOURTH FLOOR
POST OFFICE BOX 1119
CHARLESTON, SOUTH CAROLINA 29402-1119
TELEPHONE (843) 722-7606
FAX (843) 724-8016

THE PALMETTO CENTER
1426 MAIN STREET, SUITE 1200
POST OFFICE BOX 11889
COLUMBIA, SOUTH CAROLINA 29201-2834
TELEPHONE (803) 779-3080
FAX (803) 765-1243
www.hsblawfirm.com

REPLY TO:
POST OFFICE BOX 11889
COLUMBIA, SOUTH CAROLINA 29211-1889

WRITER'S DIRECT DIAL NUMBER
(803) 540-7815
E-MAIL: fmood@sinklerboyd.com

February 12, 2001

VIA HAND-DELIVERY

Mr. Gary E. Walsh, Executive Director
Public Service Commission of South Carolina
Koger Executive Center, Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

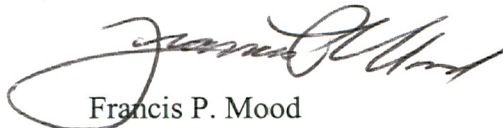
Re: Petition of AT&T Communications of the Southern States, Inc. for Arbitration of
Certain Terms and Conditions of a Proposed Interconnection Agreement with
BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252.
Docket No. 2000-527-C
Our File No.: 255.163

Dear Mr. Walsh:

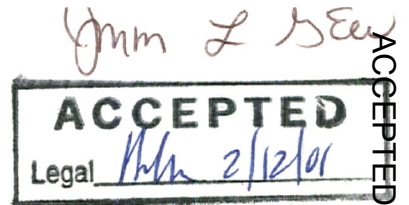
Enclosed please find an original and 10 copies of a Response of AT&T to BellSouth's
Motion for Reconsideration and/or Rehearing in the above-referenced matter. Kindly clock-in
the additional copy enclosed and return to the courier.

Thank you for your assistance in this matter. Please call if you have any questions.

Yours truly,


Francis P. Mood

FPM:gpc
Enclosures

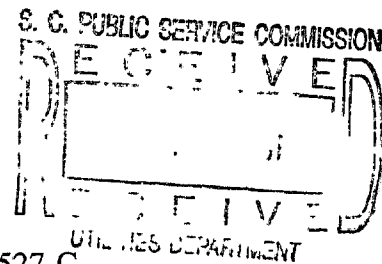


1201 MAIN STREET
SUITE 2400
POST OFFICE DRAWER 7157
COLUMBIA, SOUTH CAROLINA 29202-7157
TELEPHONE (803) 765-1818
FAX (803) 765-2399

75 BEATTIE PLACE, ELEVENTH FLOOR
TWO LIBERTY SQUARE
POST OFFICE BOX 2048
GREENVILLE, SOUTH CAROLINA 29602-2048
TELEPHONE (864) 240-3200
FAX (864) 240-3300



**BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION**



In re

Petition By AT&T Communications)
Of the Southern States, Inc. For)
Arbitration Of Certain Terms And)
Conditions O A Proposed Agreement)
With BellSouth Telecommunications, Inc.)
Pursuant To 47 U.S.C. § 252.)

Docket No. 2000-527-C

**RESPONSE OF AT&T
TO BELL SOUTH'S MOTION FOR
RECONSIDERATION AND/OR REHEARING**

AT&T Communications of the Southern States, Inc. (AT&T) hereby submits its Response to the Motion For Reconsideration and/or Rehearing filed by BellSouth Telecommunications, Inc. (BellSouth) February 9, 2001 in connection with the above-captioned matter on. AT&T respectfully urges the Commission to deny BellSouth's Motion because it raises no new issues of material fact or law that has not already been argued by BellSouth or that with due diligence could have been argued by BellSouth.

On February 9, 2001, BellSouth filed a Motion for Reconsideration and/or Rehearing. That Motion is essentially a restatement of the brief and proposed order submitted by BellSouth prior to the Commission's decision. The Motion raises no new matters that were not previously considered or could have been considered by this Commission. Through its Motion, BellSouth merely argues that it does not agree with the ruling of the Commission and, for no reasons other than those already argued, wants the Commission to re-litigate Issue 6 or change its original decision.

The concluding paragraph of the Motion captures the essence of BellSouth's request. In that paragraph – and indeed the entire Motion – BellSouth makes the same arguments it offered in its pre-filed direct and rebuttal testimony, in the brief and again in its proposed order. BellSouth merely states that the Commission erred with regard to its conclusion on Issue 6, but noticeably does not state the nature of the Commission's error. The BellSouth Motion does *not* say that there is newly discovered evidence that was unavailable at the time of the hearing, nor that the Commission failed to consider evidence or arguments that were advanced at the hearing. The BellSouth Motion does *not* argue excusable neglect, mistake, surprise, fraud, misrepresentation or any other justification that is necessary to justify a Motion for reconsideration. For example, Rule 29 of the Rules of Procedure for the Administrative Law Division provides that:

D. Motion for Reconsideration. Any party may move for reconsideration of a final decision of an administrative law judge in a contested case, subject to the grounds for relief set forth in Rule 60(B) (1 through 5), SCRCP.

Rule 60(B), SCRCP provides for relief from a final order in cases of mistakes, inadvertence, excusable neglect, newly discovered evidence (which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)), fraud, misrepresentation, or other misconduct of an adverse party. BellSouth has alleged none of these circumstances in support of its Motion. In *Pacific Ins. Co. v. American Nat. Fire Ins. Co.*, (CA 4th, 1998), 148 F3d 396, 403; cert. denied, 119 S.Ct. 869, ___ U.S. ___, 142 L.Ed. 2d 771, the Fourth Circuit Court of Appeals quoted approvingly from Wright, et al., Federal Practice and Procedure §2810.1, at 127-28 (2d Ed. 1995) stating “The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” Procedurally, a

motion to reconsider is indistinguishable from a Rule 59(e) motion. BellSouth has raised nothing in its Motion that was not raised in the original testimony, brief and proposed order. Its Motion fails to comply with the requisite standards for such a motion and therefore should be denied.

In addition to BellSouth's failure to adequately support a proper motion for reconsideration, it raises for the first time in paragraph 5 of its Motion an argument regarding the FCC's Third Report and Order. In that paragraph BellSouth quotes a footnote (note 985) from FCC Order 99-238, released November 5, 1999 that purportedly supports its contention that AT&T should pay termination charges for special access conversions. BellSouth either misinterprets or misapplies the language of the FCC order. First, BellSouth does not even attempt to assert that the FCC's order is "newly discovered evidence" which by due diligence could not have been raised at the time of the hearing or filing of briefs. Indeed, it cannot make such an argument because, as BellSouth itself pointed out, the date of the FCC order is November 1999 – more than a year prior to the hearing.

Second, the quoted footnote is taken out of context and does not stand for the premise that Bell asserts. The text of the decision to which the footnote relates states as follows:

486. As an initial matter, under existing law, a requesting carrier is entitled to obtain existing combinations of loop and transport between the end user and the incumbent LEC's serving wire center on an unrestricted basis at unbundled network element prices. In particular, any requesting carrier that is collocated in a serving wire center is free to order loops and transport to that serving wire center as unbundled network elements because those elements meet the unbundling standard, as discussed above. Moreover, to the extent those unbundled network elements are already combined as a special access circuit, the incumbent may not separate them under rule

51.315(b), which was reinstated by the Supreme Court. In such situations, it would be impermissible for an incumbent LEC to require that a requesting carrier provide a certain amount of local service over such facilities.

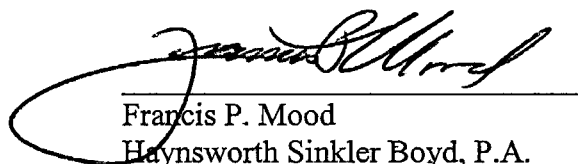
Thus, when taken in its full context, it is clear that footnote 985 was intended to apply in circumstances where the CLEC had a clear choice between special access and UNE combinations, chose special access, and later desired to convert to UNEs. The FCC began the relevant paragraph by stating the law as it currently existed. It assumed that BellSouth was complying with existing law when it wrote footnote 985, i.e., that the ILECs were willingly providing UNE combinations at cost-based rates. However, such was not the case in this arbitration. The evidence is undisputed that BellSouth had declined to provide AT&T a practical choice for UNE combinations when the contract was entered into (See SCPSC Order No. 2001-079, page 15):

In consideration of this issue, the Commission recognizes that AT&T entered into the contract with BellSouth for the provision of these services after this Commission in approving the Initial Agreement provided that BellSouth was not required to provide the combinations of network elements in lieu of special access. While the Commission believes that other avenues, such as month-to-month contracts or the purchase of UNEs with AT&T recombining the UNEs were available to AT&T other than entering the term and volume contracts, it is obvious that AT&T made the most practical choice and perhaps the best business choice available to it. Regardless, the choices available to AT&T at the time were limited due to this Commission's conclusion that BellSouth was not required to provide the combinations of network elements in lieu of special access, a conclusion that subsequently was shown to be in error.

AT&T entered into the contract for special access services with BellSouth because it could not get the UNE combinations it desired and because it had no practical alternative if it was going to be able to meet customer needs on a cost effective basis. Consequently, in the absence of the availability of UNE combinations at cost-based rates,

footnote 985 does not apply to the circumstances in South Carolina – even if BellSouth had raised the argument in a timely manner.

WHEREFORE, based on the foregoing reasons, AT&T respectfully requests the Commission to enter an order denying BellSouth's Motion on the grounds that BellSouth has not raised any new arguments or presented any newly discovered evidence which by due diligence could not have been presented at the time of the hearing or in post hearing briefs.



Francis P. Mood
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, SC 29211
Telephone: (803) 779-3080
Facsimile: (803) 765-1243

Virginia C. Tate
1200 Peachtree Street
Suite 8100
Atlanta, GA 30309
Telephone: (404) 810-4922
Facsimile: (404) 810-5901

Attorneys for
AT&T COMMUNICATIONS OF
THE SOUTHERN STATES, INC.

February 12, 2001

BEFORE
THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKET NO. 2000-0527-C

IN RE:)	
)	
PETITION OF AT&T COMMUNICATIONS OF)	
THE SOUTHERN STATES, INC. FOR)	CERTIFICATE OF SERVICE
ARBITRATION OF CERTAIN TERMS AND)	
CONDITIONS OF A PROPOSED)	
INTERCONNECTION AGREEMENT WITH)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
PURSUANT TO 47 U.S.C. SECTION 252.)	

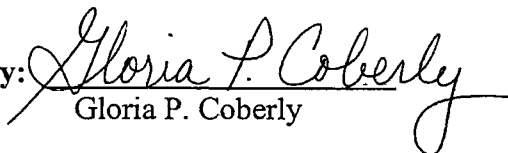
The undersigned employee of Haynsworth Sinkler Boyd, P.A., hereby certifies that (s)he has served the following parties with a **RESPONSE OF AT&T TO BELLSOUTH'S MOTION FOR RECONSIDERATION AND/OR HEARING** and any attachments thereto by hand-delivery, addressed to the persons and attorneys listed below on **FEBRUARY 12, 2001**.

ADDRESSEE:

Caroline Watson
BellSouth Telecommunications, Inc.
1600 Hampton Street, Suite 821
Columbia, SC 29201

Doug Lackey
c/o Caroline Watson
BellSouth Telecommunications, Inc.
1600 Hampton Street, Suite 821
Columbia, SC 29201

Columbia, South Carolina
February 12, 2001

By: 
Gloria P. Coberly